TESTIMONY OF

ALLEN R. COOPER

VICE PRESIDENT OF

MOTION PICTURE ASSOCIATION OF AMERICA

BEFORE THE

COPYRIGHT ROYALTY TRIBUNAL

MARCH 26, 1980

Madam Chairman and Members of the Tribunal,

I appear on behalf of member companies of the Motion Picture Association of America, Inc. (MPAA) and other associated producers and syndicators of motion pictures and television programs.

I. Introduction

In my testimony I will describe and explain the studies we have undertaken and the procedures and techniques we have employed to develop a scientifically valid method for determining the distributive share of eligible claimants to the cable royalty fund.

The development of a methodology for the allocation and distribution of the cable royalty fund to eligible claimants is a difficult task. Recognizing the magnitude and complexity of the problem MPAA initiated its studies in 1977, prior to the time that the Copyright Act became fully effective. The objective of these studies was to devise a methodology which would enable us to determine the royalty value of programs retransmitted by cable television systems. Over the course of three years this undertaking entailed the expenditure of more than $300,000 in out-of-pocket costs.

At the very outset of this undertaking it was determined that a valid system of allocation and distribution must be based on objective, reliable, representative and provable data. At the same time it was apparent that this approach necessarily involved the collection, processing and analysis of millions of "data bits". Accordingly, it was concluded that at least three "data bases" would have to be developed. We refer to these as:

1 - Cable System Data Base

2 - Transmitted Programs Data Base

3 - Syndicators, Owners, Distributors Data Base

I will describe and explain each of these data bases in my testimony.

We also decided that it was necessary to establish a time value for all programs eligible to share in the distribution of Cable Copyright Royalties. This time value was defined as the program duration in quarter-hour "units". Thus, for example, a two-hour motion picture broadcast by Station KWWW would have a "time" value of 8 "units". Similarly, a half-hour television series broadcast by Station KWWW on a Monday-Friday basis during each of 26 weeks would have a "time" value of 260 "units", computed on the basis of 260 quarter hours (10 per week times 26 weeks).

We also determined, for the reasons previously stated by Mr. Hadl, that the royalty value attributed on the basis of time should also be weighted on the basis of the license fee paid by cable systems for the secondary transmissions of broadcast programs.

On a station by station basis, we have determined the "fee generated" by virtue of being carried as a distant signal by any of the 688 largest cable systems. Per station, cable system payments range from $4.00 to $324,824.

The "fee generated" approach is also useful in arriving at a realistic and fair royalty value for programs broadcast by stations which are carried on a part-time basis by cable systems. Our research disclosed that between 35% and 40% of all Form 3 cable systems carry at least one non-local station on a part-time basis. These data are summarized in Schedule I.

Three categories of part-time carriage are defined by the Copyright Office in the "Statement of Account" forms. Type A - Part-time specialty programming; Type B - Late-night programming; Type C - Part-time carriage because of lack of activated channel capacity.

Let us assume that a cable system reports carriage of an independent station on a Type C basis, and indicates in the "Statement of Account" that it carries only three hours per day of this station's 18 hours per day operating schedule. The royalty fee paid by the cable system is proportionate to the number of hours carried vs. the number of hours the station is on the air, or 1/6th of the amount it would have paid had the cable system carried it on a full-time basis. We have therefore applied the fee generated measure of royalty value to such part-time carriage.

Now let us assume that Station KWWW generated $6,000 in cable copyright royalty fees for secondary transmissions during a 26-week period. Let us further assume that this station broadcast 2,000 quarter-hours (500 hours) of non-exempt programming during that period. Then each quarter-hour would have a royalty value of $3.00. A half-hour program broadcast by KWWW 5 days per week during each of the 26 weeks would accumulate 260 time "units" for which cable systems paid a royalty of $780. This is the amount which we believe the copyright owner of that half-hour program series is entitled to claim from the cable royalty fund.

During the course of our studies, we felt that it would be desirable, if possible, to introduce objective "quality" factors, so that we could weight programs and the resulting royalty entitlements on the basis of their relative values to cable systems. To illustrate, it is self evident that "Star Trek", "Donahue" and the host of movies and syndicated programs have far greater appeal to cable viewers in distant markets than do locally produced programs which consist almost exclusively of local news, local weather and local public affairs and which are of interest to viewers in their local market only. Compared to these programs, movies and syndicated programs are generally high-quality, professional productions which meet network quality standards, which have widespread appeal and command high levels of audience acceptance and interest in distant and local markets alike.

Despite these major qualitative differences we were obliged to conclude that it was not possible to introduce weighting factors based on perceived "quality", due primarily to the unavailability of reliable and probative, research-based empirical data to allow the assignment of quality differentials on a program by program basis. We are firm in our conviction that our product is of nationwide appeal that cable systems promote the sale of their service based on these programs; and that the opportunity to view these programs is a primary reason for the public to subscribe to cable. Examples of the value of motion pictures and other syndicated series programs to cable systems and their reliance on such programs are set out in Schedule II. However, we were unable to present to the Copyright Royalty Tribunal a probative factual basis for "quality" weighting that could be applied objectively on a program-by-program basis. The major problem encountered is the lack of data which can be used to determine relative viewing levels of specific non-local programs in cable households.

With this background, which encapsulates three years of intensive study by the MPAA, we turn now to a detailed description of the proposed "time, weighted by fee generated" system and the manner in which it has been applied to the allocation of the cable royalty fund.

II. Description of Data Bases

Toward developing the "time, weighted by fee generated" methodology, the MPAA developed three separate data bases, designed for computer processing. While each data base is independent, they are constructed so that the information from any one can be combined with data from the others to develop a formula for determining with great precision the entitlement of claimants for a share of the royalties collected from cable systems. A discussion of each data base follows.

A. Cable System Data Base

The existing MPAA cable system data base consists of selected information compiled from the "Statements of Account" filed by 833 cable systems for the January-June, 1978 reporting period.

To obtain licenses for secondary transmissions of broadcast signals, cable systems are required to submit "Statements of Account" to the Copyright Office according to their semi-annual gross receipts for "basic" service. These statements are provided in three Forms. The smallest cable systems, i.e., semi-annual gross receipts of $41,500 or less, file "Form 1" statements, accompanied with a remittance of $15.00. Cable systems with semi-annual gross receipts of $41,500 to $160,000 file "Form 2" statements, and pay from $15.00 to $1,200 in royalty fees. Systems with semi-annual gross receipts in excess of $160,000 file "Form 3" statements.

As of December 1, 1978, Copyright Office data indicated that 3,743 Statements of Account for the first semi-annual accounting period had been processed. These systems had remitted a total of $6,059,418. We also learned that of the 3,743 statements, 1,637 (43.7%) were filed on Form 1; 1,241 (33.2%) were filed on Form 2; and the balance of 856 (23.1%) were filed on Form 3.

Although the Copyright Office does not provide an analysis of the copyright royalty payments made by each of these categories of cable systems, it is simple to determine that, at $15.00 each, the 1,637 Form 1 systems had paid a total of $24,555, or 0.4% (less than one-half of 1%) of the $6,059,418. With respect to the 1,241 Form 2 systems, it is reasonable to assume that the average payment would be approximately $600 (half of the $1,200 maximum). On this basis, the Form 2 systems would have contributed about $744,600 to the "pool" or approximately 12.3%.

On these assumptions, the 865 Form 3 systems would account for the balance, i.e., $5,290,263, or 87.3% of the total. Based in part on our earlier studies but primarily on other extremely important considerations, we limited the "Cable System Data Base" to information culled from the Form 3 "Statements of Account". In the earlier testimony of Mr. Hadl we explained the structure of the Copyright Act and particularly the provisions which govern payment by cable systems for their compulsory licenses to carry non-network distant programs. As we have previously explained, only cable systems with semi-annual revenues of $160,000 or more are assessed a fee related to the number of "Distant Signal Equivalents" of the non-local station carried. As a consequence, only Form 3 statements filed by systems with semi-annual grosses in excess of $160,000 include "DSE Schedules" which furnish a specific "DSE" value for each distant station. These data are essential to the "time," weighted by fee generated methodology.

Accordingly, the "Cable System Data Base" is limited to systems filing Form 3 Statements of Account. The information derived from those Statements consists of the identification of each cable system; the "Number of Subscribers"; the systems's "Gross Receipts"; the "Copyright Royalty Fee" paid; the "Total

Number of DSEs"; and a complete listing of all "Primary Transmitters: Television", noting for each station its "Type", whether "Distant" or "local", the "Basis of Carriage" for each "distant" station, and the "Distant Signal Equivalent" for each "distant" station. Attached as Schedule III is the "worksheet" used by MPAA personnel to compile the desired data from each Form 3 statement.

Each of these completed forms was carefully reviewed. Obvious errors were noted and appropriate adjustments were made. Illustrative of such corrections are instances where a station was erroneously classified as "N" (for network) rather than "I" (for independent), "arithmetic" errors, including undercounting (or, in rare instances, overcounting) the DSEs as well as errors made in converting DSEs to the percentage of gross receipts when computing the "Royalty Fee Payable For Accounting Period."

Subsequently, these data were "coded" and transferred to a computer for analysis. A major early task greatly facilitated by electronic data processing was the determination of the "fee generated" by the carriage of specific distant television stations. In essence, the procedure employed starts with determining on a cable system by cable system basis the percentage of "Total DSEs" contributed by each distant station. Thus if a cable system reported carriage of 5 stations with a Total DSE value of 2.0, an independent station carried full-time -- with a DSE value of 1.0 -- would be credited with a 50% share of the cable copyright royalty fee paid by that system. If this fee was $2,000, then $1,000 would be credited toward determining the "fee generated" by that station. Had this station been carried on a part-time basis, and the DSE figure been calculated as .125 DSE, then the station would be credited with having generated 6.25% (0.125 divided by 2.0 x 100) of the $2,000 or $125.

B. Transmitted Programs Data Base

Fundamental to the development of a methodology for distribution of cable copyright royalties is the identification of the specific programs telecast by stations which are subsequently picked up and carried by cable systems as "secondary transmissions".

Television stations generally operate about 19 hours per day: the number of U.S. television stations in operation is approximately 1,000, of which more than 900 are affiliated with a national network. We estimate that the number of non-exempt programs transmitted by all U.S. stations during a six-month period is in excess of 2,000,000 units.

The MPAA approached this problem by subscribing to all editions (110 per week) of TV Guide magazine which provide a reliable basis for identifying the programs which are subsequently retransmitted by cable systems. (The MPAA has now accumulated approximately three years of TV Guides, and has been compelled to rent storage space to contain this collection.) From other sources, it is feasible to identify exempt network programs. We have subscribed to the Nielsen Television Index, and receive weekly reports which list all the programs distributed by the ABC, CBS, and NBC networks. We have also obtained copies of Public Broadcasting Service audience measurement reports which enumerate the programs offered by the PBS network to its affiliated stations.

To facilitate the recording and processing of this immense volume of data, the MPAA has purchased a number of publications and a customized computer tape from Broadcast Information Bureau (BIB). This organization continuously compiles and publishes data with respect to virtually all television series and motion pictures offered in the syndication marketplace. The 1978 Domestic Edition of BIB's Series, Serials & Packages edition lists approximately 10,000 television series and "specials", most of which are available to stations for local presentation. The 1978 TV Feature Film Source Book lists approximately 21,000 individual motion pictures.

Of critical significance to establishing the Transmitted Programs Data Base is the fact that BIB has assigned a discrete digital code number to each television series and special, and to each motion picture. This code number is the "key" to accessing extremely pertinent information for each program. Schedule IV indicates the data available for television series. Schedule V presents a summary of the data available for individual motion pictures.

The Transmitted Programs Data Base was constructed by transferring data from TV Guide to "coding sheets" on a station-by-station, week-by-week basis. For each non-exempt program, our compilers noted the "start time" of each program, its duration (in one-quarter hour units), the day of telecast, the title of the program, and its BIB code number, if available. (Locally produced programs, i.e., programs which are not syndicated, are not listed by BIB). In addition, a series of codes was developed to identify syndicated vs. locally-produced programs, and to a limited degree, the "type" of programs, such as "children's," "public affairs," "professional baseball," etc. The coding sheets for one week of programming on an independent station is attached as Schedule VI.

The development of a Transmitted Programs Data Base from these sources is time-consuming and costly. Transcribing the data for one station for one week from TV Guide to a coding sheet has generally required a minimum of three hours of effort by trained coders. Adding the BIB codes for each program, plus the "type codes" requires 1 to 2 additional hours. After these code sheets are checked, the pertinent data are key-punched to make them ready for computer processing. After being entered into computer disc files, accessing the data for analysis is also very costly. Our experience shows that the cost for compiling the data for one station, for one week, will average about $100.

The BIB data referred to above, including the discrete code numbers and much of the information listed in Schedules IV and V have been retained in computer tape form. From this tape, "code books" for series and movies have been generated, to facilitate the identification of specific programs. (It is not necessary to key-punch the names of BIB-coded programs into the Transmitted Programs Data Base. The program titles associated with the code numbers are stored in the computer memory, and the title can be obtained in print-out form as needed.) Schedules VII and VIII show sample pages from the "code books" produced to facilitate the construction of the Transmitted Programs Data Base.

C. The Syndicators/Owners/Distributors Data Base

The third essential type of information required to distribute cable copyright royalties is the identification of the party entitled to receive the royalties generated by the use of that program by a cable system, based on the secondary retransmission of a non-local station's schedule.

For truly local programs, the name of the originating stations can be ascertained from the Transmitted Programs Data Base. With respect to television series and motion pictures listed by BIB, for each program the names of the producers and syndicators are shown in the published books and are included in the computer tapes obtained from BIB. The BIB code number for each listed series, special, or movie, allows efficient access to this information. "Sports Events" programs were classified by type, e.g., professional baseball, professional hockey, etc.

The MPAA's Syndicator/Owner/Distributor Data Base, coupled with the information stored in the Cable System Data Base and the Transmitted Programs Data Base has the capacity to associate the call-letters of a station with respect to locally produced programs, or with the name(s) of the syndicators/owners/distributors of the vast majority of non-locally produced programs.

III. The MPAA 29-Station Sample

I have already alluded to the immense volume of data contained in the three MPAA Data Bases, and to the costliness of compiling and processing this information.

By far, the most time-consuming and costly operation involved in the MPAA "time, weighted by fee generated" methodology involves the compilation of station schedule information for the Transmitted Programs Data Base. To illustrate, we have estimated that the typical commercial network-affiliated television station transmits six syndicated programs (series or motion pictures) per day; that independent television stations schedule 20.4 syndicated programs per day; and that non-commercial educational stations broadcast 1.8 syndicated programs per day.

The MPAA Cable System Data Base indicates 3,843 instances of distant station carriage, or an average of 4.61 distant stations per cable system: the typical Form 3 cable system carried 2.17 commercial television network stations, 1.85 independents, 0.44 non-commercial educational stations and 0.15 foreign stations as distant signals. (These data are summarized in Schedule IX.)

On this basis a tabulation of the number of syndicated programs only which one cable system carries in a year follows:

Source	Per Day	Per Week	Per Year
Network Affiliates	13.0	91.0	4,732
Independents	41.0	287.0	14,924
Non-Commercial	0.8	5.6	291
Totals	54.8	383.6	19,947

Multiplying the 19,947 programs by the number of cable systems filing a "Statement of Account" for 1978, i.e., 3,775, yields a total of 75,299,925 syndicated program retransmissions, each of which is potentially entitled to be counted in determining the distribution of cable copyright royalties to claimants.

The 75 million total is based on assumptions and subject to a number of qualifications which would in turn increase or reduce that total. For present purposes it is advanced as a realistic ball-park estimate only to illustrate the magnitude of the problem. Proceeding on the basis of 75 million cable transmitted programs it must be recognized that that total is the base only for determining the number of "bits" of data that we must deal with to arrive at a fair and equitable allocation and distribution of the cable royalty fund. In addition to the title of each of the estimated 75 million programs the MPAA "time weighted by fee generated" system provides a vast store of additional and necessary information, including the duration of the program, the call letters of the station or stations that broadcast the program, the name of the cable system or systems which retransmitted the station (or stations) on a non-local basis, number of subscribers for each cable system, the type of carriage of the station, total stations carried, the payment made by the cable system for the carriage of the station, including the DSE for each signal, etc. etc.

If the cost of fully processing each "case" -- to determine a share of the royalty pool to which the owner-claimant was entitled -- was only 16 cents, the cost would be $12 million, approximately the total amount of royalties collected for secondary transmissions by cable systems in 1978. After these data are collected and entered into the data bases, the cost of computer processing is <u>additional</u>. If this cost no more than one penny -- which is highly unlikely -- the added cost would be $750,000.

Clearly, the only practical solution is "sampling". Accordingly, the MPAA's approach to sampling stations was to include initially all stations that had generated at least 1/10th of 1% of the $4.6 million in copyright fees paid by the cable systems in the Cable Systems Data Base (for January-June 1978). To be included in this group, a station was required to have generated a minimum of $4,600 in copyright fees from Form 3 cable systems.

We found that 108 of the 688 stations qualified, with "generated fees" ranging from $324,824 (6.7% of the total) by WTBS (then WTCG) to $4,900 (0.1%) by WIS, the Columbia, South Carolina affiliate of the NBC television network. These 108 stations (1/6th of the 688) generated fees totalling $3,890,014 -- about 2/3rds of the total fees collected by the Copyright Office from all cable systems, and 78% of the total represented by the cable systems in the Cable System Data Base. However, we found that a comprehensive study of all 108 stations would still be extraordinarily and prohibitively expensive. The clear solution was to select a smaller sample of stations that would be fully representative of all stations that have generated royalty fees so as to produce a statistically reliable basis for the distribution of cable royalties.

After careful study, we decided that we would construct a "stratified sample" from the 108 stations. The starting point was our knowledge with respect to the distribution of the fees generated in the Cable System Data Base among the various types of stations, <u>i.e.</u>, commercial television network affiliates, independents, non-commercial (educational) stations, and foreign (Canadian and Mexican) stations.

As indicated in Schedule X, 18.4% of the total was generated by distant carriage of commercial television network affiliates; 4.5% by non-commercial (educational) stations; 71.0% by U.S. independents; and 6.1% by foreign (Canadian and Mexican) stations. (We decided to omit the foreign stations because of limited knowledge with respect to the source, type and ownership of the programs such stations broadcast.) To the extent possible, this sample would be representative of the stations within each type classification, and be geographically dispersed.

With these criteria -- a 29-station sub-sample was selected from the 108-station list. Schedule XI lists these stations, and shows the "fee generated" by each station and by type of station. The 29-station sample consists of 16 commercial television network affiliates, 5 non-commercial stations, and 8 independents including a "Spanish Language" station and a station which is licensed to the Christian Broadcasting Network. These 29 stations generated a total of $946,891 in copyright fees for the first semi-annual period, or over 20% of the total collected from all Form 3 cable systems.

As shown in Schedule XII, there is an extremely close relation between the distribution of generated fees by type of station between the Data Base totals and the 29-station totals. This relationship can be summarized as follows:

	% of Fee Generated	
	Data Base	Sub-Sample
Independents	75.6%	75.4%
Commercial Network	19.6	19.2
Non-Commercial	4.8	5.4

It is our conclusion that the 29-station sub-sample is a statistically reliable and pragmatically valid basis for the distribution of the cable copyright royalties collected for the year 1978.

We are of the view that the methodology that I have outlined is a sound and proper method for determining the distributive shares of claimants to the cable royalty fund. The validity of that methodology depends, of course, upon the accuracy of the information contained in each of the three data bases that I have described.

For the reasons previously discussed, we can confidently rely upon the Cable System Data Base and the Syndicators, Owners, Distributors Data Base since both of these consist of objective and provable facts. Of concern, however, is the Transmitted Programs Data Base. Earlier in my testimony, I described the painstaking efforts employed in gathering the required data for this purpose in order to insure its accuracy. It will be recognized that this data base for 29 stations and six months of television station operations consists of some 259,351 quarter-hour program "units" which must be correctly coded in terms of syndicated, local and sports events. It is our concern, however, that despite our best efforts, we cannot assure that the classifications of programs contained in that data base accurately reflect the amount of program time contributed by each of the major groups of claimants.

Accordingly, for the purpose of this phase of the proceeding, we rely on the annual Federal Communications Commission Report on Television Programming for the year 1978. The programming data contained in the report was reported by commercial television stations in their 1978 Annual Programming Reports (FCC Form 303-A). The composite week on which that report is based consists of seven days randomly selected by the FCC as representative of a typical week of programming broadcast by each reporting station.*/

The fee-generated methodology was applied to the FCC's composite week in two separate studies which I will describe and explain in my later testimony.

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*/ The FCC's composite week for 1978 is as follows:

Sunday	-	October 1, 1978
Monday	-	March 13, 1978
Tuesday	-	July 18, 1978
Wednesday	-	May 24, 1978
Thursday	-	April 6, 1978
Friday	-	January 20, 1978
Saturday	-	February 25, 1978

IV. Application of "Fee Generated" Methodology to Cable Royalty Fund

The MPAA methodology has been applied to determine the royalty value of programs of the major groups of claimants to the 1978 cable royalty fund. For this purpose, we rely on the "Composite Week" selected by the FCC as the basis for its report, "Television Broadcast Programming Data, 1978," released July 20, 1979.

Our findings are based on two separate studies. Study A consists of an analysis of the program schedules of the 29 stations in our sample, using the "time, weighted by fee generated" methodology previously described. Study B extends this analysis to 502 commercial stations for each of which the FCC report referred to above provides requisite data regarding "Total Time Operating" and "Local Only" programming time.

Study A - MPAA Methodology Applied To 29 Stations

As I have previously explained, the following information and data are required for the allocation of the cable royalty fund among claimants.

1. How much did cable systems pay in copyright royalty fees for secondary transmission of the programs broadcast by a non-local station?
2. What non-exempt programs were broadcast by those stations?

For this purpose, the *TV Guide* listings of the programs of 29 stations were tabulated for each of the seven days. Each non-exempt program was coded as to whether it was "syndicated," "local" or a "sports event." During the composite week, a total of 7,887 quarter-hour "units" of non-exempt programming were broadcast by these stations.*/

Special care was exercised to determine if certain programs with "ambiguous" titles were "syndicated" or "local." All feature films and all television programs (series and specials) listed in the Broadcast Information Bureau's "Series, Specials & Packages" source book were classified as "syndicated." All non-network "News" programs and all "Public Affairs" programs dealing with local issues or otherwise clearly local in nature were counted as "locally produced." With respect to each program that could not be classified with certainty as to whether it was "syndicated" or "locally produced," a telephone call was made to the station management to obtain the required information "from the source." In each case, the station management forthrightly resolved the question.

From our Cable System Data Base, we know the copyright fees generated by the carriage of each of the stations on the Form 3 cable systems for the first semi-annual period. We divided the "fee generated" figure for each station by 26 to determine the fee paid on a per-week basis.

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*/ This total includes 1,497 quarter-hours of PBS-distributed and 437 quarter-hours of "Instructional Television" programs broadcast by the 5 non-commercial stations in the 29-station sample.

The next step was to compute the "fee per 1/4-hour" for each station. For example, independent station WSBK, Boston, generated $140,401 in copyright fees during the 26-week January-June 1978 period. Dividing this total by 26 yields $5,400 as the fee generated per week. During the composite week, our data show that WSBK broadcast 483 quarter-hours of programming, composed of 403 units of "syndicated programming," 37 quarter-hours of "locally-produced programming" and 43 quarter-hours of "sports events." Dividing the fee generated ($5,400) by the total number of quarter-hour programming units (483), yields $11.18 as the "fee per quarter-hour."

We then multiplied $11.18 by 403 to determine that "syndicated programs" had generated $4,506 of the $5,400 fee. Similarly, we determined that "locally produced programs" accounted for $414 and "sports events" for $481.

The identical procedure was followed with respect to each of the 29 stations. Schedule XIII presents these data for each of the 29 stations, with 8 identified as "independents," 16 "commercial network affiliates" and 5 "non-commercial" stations.

A final step was to total the fees generated by all stations for the three major classifications: "syndicated programs," "locally produced programs" and "sports events programs." These data are presented in Schedule XIII.

Of the $36,419 in copyright fees generated during the composite week by these stations, "syndicated programs" yielded $30,381, or 83.4% of the total; "locally produced programs" accounted for $5,292 (14.5%); and "sports events" for the balance, i.e., $746, or 2.1%.

Study B - Analysis of FCC "Television Programming Data, 1978" for 502 Commercial Stations

All commercial television stations are required to file an "Annual Programming Report" to the FCC, using a form referred to as 303-A. On this form, each station reports on the programs it had broadcast during 7 specific days selected by the FCC to provide a representation of the station's programming throughout the year.

In this study we focus on three items reported by the stations on Form 303-A, which are subsequently compiled and published by the FCC in an annual report titled "Television Broadcast Programming Data." The three items are "Total Time Operating," "Local Only" minutes of operation and "% Local of Total Time." These data are available for various time periods, including the Total Broadcast Day (up to 24 hours).

The report contains the specified data for 502 U.S. commercial stations included in the MPAA Cable System Data Base. Each of these stations was carried as a "distant signal" by one or more of the Form 3 cable systems encompassed in the Data Base. We therefore know for each of these 502 stations the "cable copyright fee" generated for secondary transmissions during the January-June 1978 reporting period.

The cable royalty fees generated by locally-produced programs, including sports are readily determined by applying the "Local Only" percentage reported to the FCC to the total cable copyright fees generated by each station.

For independent stations, this calculation requires only a simple, one-step multiplication procedure. For instance, Los Angeles independent station KTLA reported to the FCC that 7.3% of all programming it broadcast during the 1978 composite week was locally-produced. From the MPAA's Cable System Data Base, we find that KTLA generated $89,881 in royalties from Form 3 cable systems during the January-June 1978 accounting period. The royalty fee attributable to the locally-produced programs broadcast by KTLA is calculated by multiplying $89,881 by 7.3% (.073). The result is $6,561.

For network-affiliated stations, because royalty fees are paid for non-network programs only, an additional step must be taken to estimate the royalty fees generated by locally-produced programs. Approximately 66.5% of the programming broadcast by a network affiliated station is supplied by a network. The remaining 33.5% constitutes non-network programs, consisting of locally-produced programs and "others" (i.e., syndicated and sports) for which cable royalties are paid. Thus, to calculate the royalty fees generated by local programs broadcast by a network affiliate, the local program percentage reported to the FCC must be divided by 33.5% (0.335) to determine the percent local programming represents of all non-network programming. The result is then multiplied by the total royalty fees generated by the station to determine the royalty fees generated by local programs.

To illustrate, KABC, Los Angeles, reported to the FCC that locally-produced programming constituted 16.1% of all programming (including ABC Television Network programming) broadcast during the composite week. This 16.1% must be divided by 33.5% to determine the percent of non-network programming attributable to locally produced programs. The resulting 48.1% is then multiplied by the royalty fees generated by the non-network programs broadcast by KABC, i.e., $13,734. Thus $6,606 was generated over the 26-week period by local programs produced and broadcast by KABC.

The 502 stations listed in the FCC report and in the MPAA Data Base generated $4,319,190 in cable copyright royalties during the first accounting period of 1978. According to the analysis described above, locally-produced programs including sports programming broadcast by these 502 stations would have generated $693,117 in cable royalties, or 16.047% of the total generated by the 502 stations for all non-exempt programming. The balance, 83.953% is therefore attributable to syndicated programming, including syndicated sports. The underlying data for Study B are presented in Schedule XIV.

The analysis set forth in Study B is subject to one qualification. The FCC's Annual Programming Report is based upon reports by stations of local time in minutes excluding all commercial matter and non-program material. The allocation of 16.047% to local programs was based on the percentage of such programs of total time, including commercials and other non-program material;

and the syndicated allocation of 83.953% was determined by subtracting the allocation to local programs from 100%. In order to adjust these percentages on a consistent basis it would be necessary first to find out what portion of an average hour's programming (for non-network programs) is devoted to commercial matter (as defined in the Annual Programming Report).

For illustration purposes, assume that an average hour's program contains 12 minutes of commercial matter (or 20% of the time). The 502 station average would then be 20.06 for local, including sports and therefore 79.94% for syndicated programming.

For all of the reasons which I have discussed, I believe that the "time weighted by fee generated" methodology as applied by us provides an objective and fair basis for the distribution of cable royalty fees.